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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK CLARNER

Appeal 2007-2778
Application 10/688,320
Technology Center 3600

Oral Hearing Held: April 9, 2008

Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and JOSEPH A. FISCHETTI, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

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The above-entitled matter came on for hearing on April 9, 2007, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Dan Hawkins, Free State Reporting, Inc.

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PROCEEDINGS

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MR. BABINEAU: -- mine, and on the right will be Mr. Mark Clarner,
the named inventor on the, on the Patent Application we're discussing this
morning. Gentlemen, good morning.

7

JUDGE FISCHETTI: Good morning.

8

JUDGE CRAWFORD: Good morning.

9

UNIDENTIFIED: Hello.

10

MR. BABINEAU: If, if, if it's -- if it will be okay with, with the
Board, we, we'd like to -- there, there are a number of claims that we have
on appeal on this case, and what we'd like to do is go through a particular
order to try to see how many issues we can, we can discuss with you this
morning as we have time.

15

I understand that we're limited to 20 minutes. Is that correct?

16

JUDGE CRAWFORD: Yes, that's correct.

17

MR. BABINEAU: Okay. Specifically, we have -- there are four
Independent Claims, and, and as I launch into this let me just say something
about all of them as a whole. This is one Patent Application, though I think
there are two other Patent Applications pending at the moment that all came
out of some, some -- what Mr. Clarner was doing in developing some new
theories that have to do with the fundamental engagement of an array of
hooks with a fairly indeterminate chaotic field of loops. He works for
Velcro Group Corporation, and of course this is their business.

25

And his new theories have led him to focus on some new hook
attributes that had -- that are featured in these claims, that have previously

26

1 not been considered in the prior art. And, really the, the, the application
2 focuses on four things. And, the first claim we'd like to, to spend a little
3 time discussing this morning is this Claim 48, and the reason we'd like to
4 discuss this claim is because the reason for rejection has to do with what we
5 understand from Federal Circuit case law to be an improper use of drawings
6 in determining the disclosure of reference.

7 In effect the, the way the Examiner reaches Claim 48 from the Aquino
8 (phonetic sp.) reference is to essentially refer to the figures and to say that,
9 well anyone can see from the figures that the ratio of this dimension to that
10 dimension is more than X, and we, we discuss in the briefs the -- what we
11 think is the relevant case law on the subject, but we wanted to use our, our
12 time this morning, at least the beginning of our time this morning, to see if,
13 you know, if you had any questions about this particular feature.

14 This, this is of, of some importance to us, this, this, this mode of
15 rejecting claims, because we're seeing this come up more frequently from
16 this Art Unit in particular. And, as I say, we're seeing it in some other cases
17 that are following this one in the pipeline, so we wanted to appeal this issue
18 in particular and have your, your, your ruling on it.

19 JUDGE CRAWFORD: Okay, go, proceed.

20 MR. BABINEAU: Okay. The, the second claim that -- the second of
21 the four Independent Claims we'd like to talk about is Claim 27, and as, as
22 with Claim 48, Claim 27 features a particular ratio of dimensions of the, of
23 the hook.

24 JUDGE BAHR: Excuse me, could I interrupt for a minute? Claim
25 27 is now withdrawn from the Appeal, isn't it?

1 MR. BABINEAU: I didn't believe so. Is it, s it withdrawn? No, I
2 am, I am sorry, Claim 27 is withdrawn from the Appeal. This was in the
3 Reply Brief. Well, may I, may I -- rather than focus on Claim 27, I'd, I'd
4 like to, I would like to bring up one of the features of Claim 27 because it
5 also -- you find it in some of the Dependent Claims that are still, still under
6 appeal.

7 For example, with respect to Claim 50, and let's see, and Claim 64
8 we, we have dimensions that are, that are referenced from what's called the,
9 the lower-most point of the tip, the lower-most extent of the tip of the head.
10 And, the -- again the tip is recited as the head extends from the stem to a tip.
11 And, in rejecting Claim 27 and also rejecting the Dependent Claims that I
12 mentioned a minute ago, the Examiner appears to be referencing his
13 dimension from the lower-most point of another part of the, of the head, but
14 not the tip. The, the reason that, that this feature is important in the context
15 of this invention is that the these -- part of what Mr. Clarner is, is trying to
16 do in developing these new theories of, of engagement is also try to develop
17 hook attributes that would have good engagement properties but also be
18 suitable for a very high-speed molding in fixed cavities.

19 And, so some of these attributes particularly pertain to hooks that can
20 be molded in form rather than having heads that are formed in a subsequent
21 deformation process or deformation step. And, so again this is something
22 that we just --

23 JUDGE BAHR: Can you just point out to me --

24 MR. BABINEAU: -- we just don't think the Examiner --

25 JUDGE BAHR: Could you point out where that's discussed in the
26 specification?

1 MR. BABINEAU: Where it's discussed in the specification that --

2 JUDGE BAHR: Which -- with respect to that particular feature, why
3 it's critical.

4 UNIDENTIFIED: Paragraph 73 gets into -- it relates to the mold
5 release factor as well as the what, what Mr. Babineau is talking about
6 relative to the deep well portion where we talk about our ability to remove
7 these molded fasteners without having to open the cavities.

8 As Mr. Babineau is saying, you know, we're, we're continuously
9 molding these. Another important attribute is the fouling or the
10 contamination of the rings. We find that with polymers that can take a lot of
11 different types of additives, it ends up building up in the tooling and causing
12 fouling. I believe we addressed that in Paragraph 73. It also allows the hook
13 after de-molds to return to its original shape, and this is very, very important
14 for not just strength characteristics but also for cycle ability of the. of the
15 closure.

16 MR. BABINEAU: Did that answer the question?

17 JUDGE BAHR: More or less.

18 MR. BABINEAU: Okay. Well, we certainly welcome your questions
19 during this time we have. The -- with respect to some of the Dependent
20 Claims that are -- that we're still -- for which we're still maintaining the
21 Appeal, there are certain features that, as we pointed out in the briefs, we
22 believe the Examiner, and again this is an Examiner who is very detail-
23 oriented and, and, and we usually -- we greatly respect his analysis in, in, in
24 many instances. We just think that he has made an error. For example, in
25 discussing with respect to Claims 17, for example, the, the inclination angle
26 that's recited of the stem surfaces, the stem surfaces you'll see in the figures

1 should -- in, in, in Mr. Clarner's application are tapered from a wide point in
2 the base up, up to the upper end of the stem. And, this, this taper of
3 inclination angle also assists in molding and also assists in, in directing
4 loops up to the crooks, and this is recited in, in certain Dependent Claims in
5 being between 20 and 30 degrees. And, the Examiner has recited angle theta
6 from Figure 4B of the Aquino Reference as corresponding to that inclination
7 angle, but the inclination angle of the claim is called out as reference to a
8 normal to the base. And, theta is described as being referenced to a
9 horizontal plane. So, so we don't, we don't -- we just haven't been able to
10 have a meeting of the minds with the Examiner on this point.

11 The -- another, another claim that we, we would like to, to certainly
12 address with you this morning and, and, and welcome your, your comments
13 and your questions, it has to do with one of the 103 rejections in which the
14 Examiner actually combines Aquino with another reference. Claim 10 in
15 combination with Claim 1 adds or recites that the tips of the, of the heads
16 extend back toward the base. We call this -- Mr. Clarner calls this in hook
17 science having a reentrant head or that it, it, it comes back toward the base.
18 And, as you can imagine, these things being molded in closed cavities and
19 deformed during the process of, of distending them from the mold and
20 having them snap back to their shape, having a head that is molded to extend
21 back toward the base, is more significant molding consideration.

22 And, the Examiner has, has simply taken Aquino's teachings and
23 added a secondary reference, in this case Takisowa (phonetic sp.) and said
24 well, Takisowa teaches having tips extending toward the base; therefore, it
25 would have been obvious to make Aquino's tips extend toward the base.
26 However, Aquino's -- clearly Aquino's process and Aquino's design is, is

1 focused around a, a preformed product that is able to be molded readily
2 without having a, a reentrant tip and is deformed specifically to form a
3 certain type of, of head that is useful for engaging low lying loops, but
4 specifically does not have a reentrant head.

5 And, we, we don't find from our perspective a significant enough
6 explanation from the Examiner as to why someone would take these two
7 disparate features from two references in the art and make the combination.

8 A, a few, a few other Dependent Claims we would certainly like the
9 claim -- the Board to, to, to reverse the rejection of: One is Claim 11 which,
10 which recites that the underside of the crook, underside surface of the head
11 is arched. The, the Examiner points to the, the tip of, of Aquino which has a
12 slight radius to it as it, as it ends that, saying the underside surface of the
13 crook is arched.

14 Our position, Mr. Clarner's position is that someone reading his
15 Patent Application and looking at his figures and understanding just the
16 basic usage of the word arched of a surface would not see Aquino's hook as
17 having that qualification, that attribute.

18 And, and, and just, just so that we can hit one last claim, Dependent
19 Claim 5 is an example where we believe the Examiner has, has fallen back
20 on, on, on, if you'll pardon, a crutch of, of the mere design choice form to --

21 JUDGE BAHR: I'm sorry, did you say Claim 5?

22 MR. BABINEAU: Claim 5. Is this, is this one that is, is no longer
23 under appeal? Oops, I'm sorry. Let me, let me retract my statement with
24 respect to Claim 5.

25 We would certainly welcome any questions from the Board in the
26 small time we have left with respect to anything we've said this morning or

1 things in the Brief that you feel are, are important in your consideration in
2 this case.

3 JUDGE BAHR: I just have one question. The meaning of the term
4 crooks, I'm wondering if crooks has a particular meaning within the art other
5 than the normal dictionary definition.

6 MR. BABINEAU: And, I'll ask Mr. Clarner to comment on this also,
7 but we have used the term in the, in the art with respect to several patent
8 applications in this field to, to relate to an area that defines a, a volume for
9 retaining a, a loop of fiber of some sort. In our drawings the crook is the, is,
10 is the volume that's, that's, that's bounded on at least three sides by the stem
11 and the head. The Examiner has, has referred to the crook in Aquino,
12 referred to the intersection of the underside of the head and the stem as a
13 crook. And, you know, we have considered whether to take umbrage with
14 that, that broad use of the word. We still question whether Aquino, to the
15 extent that intersection of the underside of the stem -- the head and the stem
16 form something that would be called a crook, whether that is a, a crook that
17 is really formed by the underside of the head as is recited in several of the
18 claims, or is really not so formed.

19 Mark, do you have anything to add about how crook is used in, in
20 your field?

21 MR. CLARNER: You know, just briefly, I'd say that the crook
22 portion is typically part of the head portion of a hook and it's, it's comprised
23 of a arc that, that extends from the head portion and it, you know, has a
24 purpose for loop retention, but, you know, I think Mr. Babineau sums it up
25 rather well.

1 JUDGE BAHR: So, what I'm gathering from what you're telling me
2 is that the, the term crook doesn't necessarily require that the bottom surface
3 or that the tips extend back down toward the base. Is that correct?

4 MR. BABINEAU: Do you want to go?

5 MR. CLARNER: We, we have not been using that word that way in
6 this application. We have, we have recited in, in a, in a Dependent Claim to
7 Claim 1, for example, in terms of claim differentiation that we have a tip that
8 extends back toward the base.

9 JUDGE BAHR: Okay, thank you.

10 MR. CLARNER: But we would, we would certainly -- I mean to the
11 extent that that is another feature that does distinguish the Aquino Reference
12 with respect to Claim 10, for example, we would certainly appreciate the
13 Board's specific consideration of that Dependent Claim.

14 JUDGE CRAWFORD: Any further questions? Judge Fischetti? We
15 have nothing further.

16 MR. BABINEAU: Well, thank you all very much for your time
17 today. We appreciate that.

18 JUDGE CRAWFORD: Thank you.

19 MR. CLARNER: Thank you.

20 (Whereupon, the proceedings concluded.)